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TESTIMONY FROM THE OFFICE OF THE CHILD ADVOCATE TO THE EDUCATION COMMITTEE, MARCH 15, 2023

Chairman Currey and Chairman McCrory, Representative McCarty, Senator Berthel, and other members of the Education Committees. This testimony is being submitted on behalf of the Office of the Child Advocate ("OCA"), an independent state oversight agency. The obligations of the OCA are to review, investigate, and make recommendations regarding how our publicly funded state and local systems meet the needs of vulnerable children.

H.B. 1200 AN ACT CONCERNING SPECIAL EDUCATION

OCA supports the language in Section 5 of the bill, which seeks to ensure that children with special education needs are not discriminated against in the enrollment process for state and local charter schools. We must ensure that children with disabilities always have equal access to educational services.

OCA published a report in 2015, in which we found that children subject to restraint or seclusion frequently had unmet educational needs. We also found significant concerns regarding the spaces used for seclusion, which included utility closets, storage closets, and cell-like spaces. We continue to see these concerns in our intakes and investigations. Seclusion and restraint are harmful interventions that cause trauma and injury and interfere with the development of therapeutic relationships. Programs that rely on restraint and seclusion have higher injury rates and lower rates of retention among staff.[1]

Section 6 of the bill makes changes to Connecticut's laws regarding the use of seclusion in educational settings. OCA supports the elimination of the use of seclusion. OCA continues to have concerns about the use of seclusion in schools, and the harmful impacts on children. Research shows that restraint and seclusion often escalate children's behaviors and increase children and staff's risk for injuries.[2]

> OCA recently learned that, as part of its in-house special education program for children (grades 1-6) with trauma, anxiety and/or behavioral issues, one district uses a room that is covered in blue pads (floor and walls) to isolate young students when they become a danger to themselves and/or others. The room has a solid door with one window high on the door for staff to observe the student. There is nothing in the room besides the blue pads. Staff will talk to student through closed door but will not

[1] https://www.samhsa.gov/sites/default/files/topics/trauma_and_violence/seclusion-restraints-1.pdf
[2] https://www.samhsa.gov/sites/default/files/topics/trauma_and_violence/seclusion-restraints-1.pdf

enter while student remains dysregulated. Recently, a student who became more dysregulated after being locked in this room engaged in self-injurious behavior and banged his head against the door knob resulting in a concussion and requiring a hospital stay. The staff member who was supposed to observe him through the window did not see him as he was so close to the door.

OCA has also observed instances in which schools have used seclusion as a planned intervention. There is no evidence that supports the efficacy of seclusion as a behavioral intervention and, for that reason, we support its prohibition.

OCA supports the language in Section 6 to prohibit the use of physical restraint when it is contraindicated based on the student's disability, health care needs or medical or psychiatric condition or as a planned intervention. As with seclusion, there is no evidence that supports the use of restraint as a behavioral intervention.

We want to emphasize that prohibiting harmful practices alone is not enough to change practice. Reducing restraint and seclusion requires that all children benefit from skilled instruction with attention not only to academics but also to social-emotional learning and positive behavioral supports. The state must consider supporting schools in an effort to implement evidence-based, tiered frameworks for prevention and intervention.

Recommendation re tracking of "time outs:"

OCA notes that with the prohibition of the use of seclusion, the bill eliminates the requirement that schools record and report use of seclusion. Connecticut General Statutes §10-236b was amended in 2018 to carve out so-called "exclusionary time out" from the definition of seclusion. Since that time, OCA has developed concerns about this exception, including that children may be placed in seclusion but schools are calling it exclusionary time out and not documenting it as seclusion. We continue to see instances of children confined to rooms while a school employee stands at the door to prevent the student from leaving, and these instances are not treated as seclusion by the district.

OCA received concerns from a school district (LEA) in relation to an outplacement. The LEA reported that it observed a student in the outplacement who was in an isolated room (referred to as the "quiet room"), while staff blocked the doorway to keep her contained in the room. The LEA initially reported concern that the student was not adequately monitored in relation to a medical issue. Later, when OCA requested additional information, the LEA indicated that the student received adequate medical attention. The concern of placing the student in seclusion, without recording it as such, remained. This reported observation is consistent with OCA's own observations and record reviews: students who were kept in "quiet rooms" by staff blocking the doorway and/or students being "re-directed" if they attempt to leave the room. Those instances should be reported as seclusion, but are frequently not, instead labeled as an "exclusionary time-out." OCA is concerned that we will see the same thing if seclusion is prohibited and "time out" is permitted, particularly without any requirements for documentation or reconvening in PPT.

OCA would urge the Committee to consider requirements for the tracking of the use of time-out. In particular, tracking the frequency and duration of the use of time out and notification to parents if the use of time-out exceeds certain limits will be important to ensure that we do not see an over-reliance on "time-out." If a child is in "time-out" for three hours of the school day repeatedly, that is an indication of a problem. Under the current language of the bill, such a situation would not trigger notification to the parent or a PPT meeting.

OCA would also urge the Committee to consider requiring video monitoring and recording of children placed in "time-out spaces." OCA believes this would serve as an important source of information for parents whose children are repeatedly placed in time out.

Section 8. OCA strongly supports public transparency with regard to the Connecticut State Department of Education's (CSDE) monitoring and enforcement of the rights of children under the Individuals with Disabilities Education Act (IDEA). IDEA mandates that all children with disabilities receive a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE").[3] Under federal and state law, the CSDE is responsible for ensuring that school districts (Local Educational Agencies (LEAs)) comply with IDEA. When CSDE becomes aware of individual noncompliance and/or systemic noncompliance, it must investigate and put corrective measures into place. Federal law also requires that states adopt written complaint procedures, and that CSDE investigate, where necessary, such complaints and resolve them within 60 days.[4] CSDE must also, where required, issue directed corrective actions and provide technical assistance to school districts where needed to ensure compliance with state and federal special education laws."[5] Currently, CSDE does not publish or post its complaint findings, conclusions, or corrective actions. If CSDE determines a particular practice to be in violation of the law in one district, it may continue in other districts because there is no method of public disclosure of those findings.

<u>Recommendation re transparency:</u> OCA urges the Committee to make some additions in this section of the Bill.

- First, OCA recommends including a requirement that CSDE also publish all approvals, re-approvals, monitoring and enforcement activities, corrective action plans, and monitoring of implementation of corrective actions related to private approved special education programs or other separate schools. CSDE is responsible for determining whether a privately operated special education program meets certain federal and state requirements. A list of Approved Private Special Education Programs (APSEP) is published by CSDE. Investigations by the Auditors of Public Accounts[6] have revealed that substantial work remains to ensure adequate oversight and transparency for these programs—schools that serve highly vulnerable children "placed out" out of the public school district for their education. Based on recent federal data, Connecticut leads all states in the placement of children with disabilities age 6 to 21, in "separate schools."[7] Connecticut also ranked second among all states for the percentage of children identified as having Emotional Disturbance who were educated in "separate schools," with <u>almost a third of these students educated in separate settings</u>.[8] The majority of children in such programs are Black, Hispanic, or Bi-racial. Currently, despite findings and recommendations by the Auditors of Public Accounts, scant information about the oversight of such programs, either by the school district or State Board, are public. OCA recommends

[3] 20 U.S.C. §§ 1400-1490.
[4] 34 C.F.R. § 300.151 and 300.152.
[5] 34 C.F.R 300.152.
[6] https://www.cga.ct.gov/apa/reports/performance/PERFORMANCE_State%20Department%20of%20Education%27s%20Approval%20Process%20of%20Private%20Special%20Education%20Programs%20and%20Oversight%20of%20Non-approved%20Programs_20180222.pdf;
https://www.cga.ct.gov/apa/reports/performance/PERFORMANCE_State%20Department%20of%20Education%27s%20Approval%20Process%20of%20Private%20Special%20Education%20Programs%20and%20Oversight%20of%20Non-approved%20Programs_20180222.pdf
[7] Report can be found here: https://sites.ed.gov/idea/files/43rd-arc-for-idea.pdf.

[8] "Separate schools" is defined in the report to include "students with disabilities who receive special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate day schools or residential facilities."

that this information be available to the public, so that LEAs and parents are informed about the programs into which they may place children.

- Second, OCA recommends that the Committee add a requirement that CSDE publish information describing the methodology and outcomes from its IDEA-mandated monitoring and enforcement activities related to specific cohorts of highly vulnerable students, including children ages 3 to 5, children in state-approved private special education programs or alternative public schools, children who are identified as multiply disabled, children who are homebound or hospitalized, and children who are incarcerated. It is imperative that the state begin to develop an understanding of the gaps in delivery of special education services to these most vulnerable groups of children.

- Third, OCA urges the Committee to consider holding an annual public hearing at which CSDE would report on its findings, corrective actions and related ongoing monitoring and enforcement of implementation of special education services under the Individuals with Disabilities Education Act, including monitoring activities regarding highly vulnerable children. This ensures that information is publicly available and that the legislature is informed on these important issues of public policy.

H.B. 6883, AN ACT CONCERNING STUDENTS WITH DEVELOPMENTAL DISABILITIES – SUPPORT

OCA supports H.B. 6883. School districts are responsible for evaluating, planning for, and providing transition services to students who need them. The purpose of these transition services is to prepare students for post-secondary education, independent living, and employment. This presents challenges as the proportion of students who require transition services is small relative to the student population and each district creates its own programs, resulting in significant variability. The importance of transition services can't be understated. Transition services prepare children, often children with very significant disabilities, to move into adulthood. They need services focused on building skills for independent living – like driving, using public transportation, knowing how to grocery shop, make meals, and pay bills. The need to develop skills for employment, from showing up on time, to completing specific tasks, to understanding how to interact with co-workers. Every student that needs transition services should receive high quality meaningful services. This bill would create an Office of Transition Services within CSDE to provide support and resources to districts to promote the development of minimum standards and use of best practices in the provision of transition services. The Office would also be required to provide training to ensure that those employed by districts as transition coordinators meet certain minimum standards. The bill would also require that CSDE make information regarding transition services and resources available online in a way that is accessible and navigable.

I want to focus in particular on the provisions of the bill that impact children with intellectual and developmental disabilities. This population is under-served across the board, including in relation to transitions services. Section 13 of the bill requires schools, at the first PPT when the child turns 17, to inform the parent of any child who may have intellectual disability of the laws related to becoming a conservator for such child through probate court.

Recommendations:

- OCA notes that for individuals with intellectual disabilities, substitute decision making would fall under guardianship in accordance with Connecticut General Statutes 46a-669, rather than conservatorship, and the bill should be corrected to use the term guardianship.
- OCA would also recommend that schools also be required to provide parents with information regarding eligibility for services from the Department of Developmental Services. Parents often are not aware that the conditions of having an IQ under 70 and significant deficits in adaptive living skills must be documented as occurring prior to the age of 18. This makes proper evaluation prior to the age of 18 critically important. For some children, this does not happen, which can result in lifelong ineligibility for DDS services. It is critically important that parents receive this information before it is too late to have the necessary evaluations completed. While this information may be included within the language of Section 9, subparagraph (9)(B), it is still important for the information regarding DDS eligibility criteria to be specifically required in Section 13. Parents need this information. They need it in writing. They need it communicated verbally. They need it to be repeated. And they need someone helping them to make sure they understand and they know how to apply. These systems are just not easy to navigate, even for the most skilled parents.

OCA supports the language of Section 14(B) and (C) to enhance the information provided to parents and assistance with connection to state agencies that may be able to provide services. While federal law already requires LEAs to invite potential state agencies to which children may transition to participate in PPT meetings, this may not occur and parents have very little information about what services might be available. For parents, it is incredibly difficult to navigate the various agencies that may or may not have services available for the children as they transition out of educational services. We must do everything can to provide information, ensure that parents are aware of eligibility criteria, and help connect students to adult services.

Section 15 requires DDS to assist any child who is determined to be potentially eligible for services from DDS to secure summer employment. OCA supports this but notes that LEAs may have responsibilities to provide programming during the summer as part of IDEA, and employment secured with the assistance of DDS should not supplant services that the LEA is required to provide.

Lastly, OCA supports Section 21, to direct that CSDE audit the provision of special education services including interviewing teachers, staff, and parents; conduct un-announced on-site visits; and review IEPs. CSDE's oversight of special education is currently largely based on responding to complaints. OCA believes that the addition of affirmative oversight, site visits, and independent review of IEPs and actual service provision is invaluable to ensuring that all students receive appropriate educational services throughout the state.

Sincerely,

Sarah Healy Eagan, JD

Child Advocate

State of Connecticut